



Ronald B. Turovsky, Esq.
Manatt, Phelps & Phillips
11355 West Olympic Blvd.,
Los Angeles, CA 90064

Dear Mr. Turovsky:

On June 20, 1996, the Federal Election Commission notified your clients, Prince for Congress ("Committee") and James M. Prince, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on June 10, 1997, found that there is reason to believe the Committee and James M. Prince, as treasurer, violated 2 U.S.C. §§ 434(a)(6)(A) and 441a (f), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. .

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Eugene Bull, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Procedures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 4389

RESPONDENT: Prince for Congress and James M. Prince, as treasurer

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities, and by a complaint received from Michael J. Schroeder on June 17, 1996 against the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer (a.k.a. Orange County Democratic Party) (the "Democratic Committee" or the "Party"), James ("Jim") Toledano, James ("Jim") Prince, Debra Lee LaPrade, and Paul LaPrade.

The complaint filed by Mr. Schroeder asserts that prior to their 12 Day Pre-Election Report due before the March 26, 1996 California Primary, Mr. Toledano, as Chairman, and/or the Democratic Committee received payments of \$5,000 or more from Debra Lee LaPrade and Paul LaPrade to be used in support of the election of Jim Prince to California's 46th Congressional District. Complainant alleges that the Democratic Committee filed no pre-election report of any kind disclosing the receipt of said payments. He further alleges the monies were used to finance a mailer supporting the candidacy of Mr. Prince. The mailer was mailed "after the 20th day, but more than 48 hours, before 12:01 A.M. of the day of election." However, no 48 hour notification was

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filed. Moreover, the required disclaimer was not included even though the mailer expressly advocated Jim Prince's candidacy.

Finally, Complainant contends that the payments by Debra Lee LaPrade and Paul LaPrade caused each of them to exceed applicable contribution limits of the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Response

Jim Prince, through counsel for himself and the Prince Committee, makes several denials and/or assertions concerning the allegations in the complaint. These denials are set forth in his response and a declaration by Mr. Prince attached to his response. First, Mr. Prince denies knowing that the activities of Jim Toledano on his behalf constituted a reportable event or an excessive contribution. He also denies any knowledge that Paul and/or Debra LaPrade had spoken with Mr. Toledano or of what they discussed. He denies speaking with either of the LaPrades, and further denies suggesting or requesting that they make a contribution to the Democratic Committee or his campaign in the manner alleged in this matter. Mr. Prince asserts that he was unaware that Paul and/or Debra LaPrade had written a check to the Democratic Committee until the approximate time at which the mailer was received by voters. He asserts that he has no knowledge that a contribution was earmarked for his campaign or given to the Democratic Committee with instructions to prepare and disseminate a mailer. He further asserts that he has no knowledge regarding the activities of Mr. Toledano or the Democratic Committee in this matter, although he states his belief that Mr. Toledano was attempting to fall within the slate card exemption to the definition of a contribution. Mr. Prince also

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denies that he suggested to Mr. Toledano that the contributions received from the LaPrades be used to pay for a mailer in support of his candidacy. He asserts that he was not consulted nor did he cooperate, give consent, or act in concert with anyone in connection with the expenditures made for the mailer. Further, Mr. Prince states that Mr. Toledano was not given authorization to raise funds for Mr. Prince, was never an officer of the Prince Committee, and never received any form of compensation or reimbursement from Mr. Prince and/or the Prince Committee.

Mr. Prince states that his Committee erred on the side of disclosure and "tentatively" reported the mailer as a contribution as soon as it became aware of the possibility that the mailer resulted in a contribution to his campaign. Mr. Prince argues that, overall, he acted in good faith, and did not knowingly and willfully accept a contribution in excess of the Act's limitations, intentionally fail to report a contribution, or intentionally fail to include disclaimer language on a communication expressly advocating his election.

B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), limits to \$1,000 per election the amount which any person may contribute to a candidate and his or her political committee; and limits to \$5,000 per calendar year the amount which any person may contribute to any political committee -- other than political committees established and maintained by a national party, which are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(A) and (C). The Act further limits to \$5,000 per election the amount which any multicandidate political committee may

contribute to any candidate and his or her political committee. 2 U.S.C. § 441a(a)(2)(A).

A "multicandidate political committee" means a political committee which has been registered under section 433 of the Act for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

2 U.S.C. § 441a(a)(4). It is a violation of the Act for any candidate or political committee to knowingly accept any contributions which are in violation of 2 U.S.C. § 441a.

2 U.S.C. § 441a(f).

The term "contribution" includes (i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or (ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose. 2 U.S.C. § 431(8)(A)(i) and (ii). It does not include the payment of a State or local committee of a party of the costs of preparing, displaying, or mailing or distributing a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized. 2 U.S.C. § 431(8)(B)(v). In addition, 11 C.F.R. § 100.7(b)(9) requires that the payment of the portion of the costs allocable to Federal candidates be made from funds subject to the limitations and prohibitions of the Act.

The term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9)(A)(i). The

Commission has defined "anything of value" to include all in-kind contributions, i.e., "the provision of any goods and services without charge or at a charge which is less than the usual and normal charge for such goods and services" 11 C.F.R.

§§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv). Expenditures which are made by any person, including a political committee, "in coordination, consultation or concert with, or at the request or suggestion of, a candidate, his authorized committee or their agents" are considered in-kind contributions to that candidate. 2 U.S.C. § 441a(a)(7)(B)(i). Thus, "[a] communication made in coordination with a candidate presumptively confers 'something of value' received by the candidate so as to constitute an attributable [in-kind] 'contribution.'" Advisory Opinion 1988-22. In contrast, an expenditure made by a person, including a political committee, which expressly advocates the election or defeat of a clearly identified candidate, but which is not made "in cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which [is] not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate" is an "independent expenditure." See 2 U.S.C. § 431(17).

2 U.S.C. § 434(a)(6)(A) requires the principal campaign committee of candidates for Federal office to notify, in writing, either the Clerk of the U.S. House of Representatives, the Secretary of the U.S. Senate, or the Commission, and the Secretary of State, as appropriate, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election.

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C. Analysis

Because the Prince Committee helped Mr. Toledano to obtain a photograph of Jim Prince to use in the production of the mailer, the mailer was an in-kind contribution to the Prince Committee. Moreover, the value of the production and distribution of the mailer exceeded the \$1,000 limit which the Act allows a person to contribute to a candidate with respect to an election for Federal office. See 2 U.S.C. § 441a(a)(1)(A). Mr. Toledano's use of the \$10,000 for the mailer was not consistent with the requirements for exemption from the definition of a contribution under 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9). The mailer only featured 2 candidates for public office rather than the 3 or more required by the Act. Thus, the mailer was an excessive in-kind contribution to the Prince Committee in violation of 2 U.S.C. § 441a(f). Accordingly, there is reason to believe Prince for Congress and James M. Prince, as treasurer, violated 2 U.S.C. § 441a(f). Further, although the Prince Committee received the in-kind contribution, which was in excess of \$1,000, after the 20th day but more than 48 hours before the primary election, it did not file the required 48 hour notification with the Commission. Therefore, there is reason to believe Prince for Congress and James M. Prince, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).